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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/842,024
Filing Date: 04/26/2001
Appellant (s): Appelman et al.

Kevin E. Greene Reg. No. 46,031 (Registration Number 46,031)
For Appellant

EXAMINER'S ANSWER

This examiner's answer is in response to the appellant's Appeal Brief filed 30 May 2007.

I. Real Party in Interest.

A statement identifying the real party in interest is contained in the brief and is acknowledged.

II. Related Appeals and Interferences.

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief and is acknowledged.

III. Status of Claims.

This is an Answer to an appeal from the final rejection of claims Claim 1, 2, 4-11, and 15-20, which are all the claims in the case. Examiner agrees with the statement of the status of the claims contained in the appellant's brief.

IV. Status of Amendments After Final.

Examiner agrees with the statement of the status of amendments contained in the appellant's brief.

V. Summary of Claimed Subject Matter.

Examiner agrees with the summary of the invention contained in the appellant's brief.

VI. Grounds of Rejection to be Reviewed on Appeal.

Examiner agrees with the issues presented for review as contained in the appellant's brief. The only remaining rejection is upon claims 1, 2, 4-11, and 15-20 which stand rejected under 35 U.S.C. 102 (e) as being anticipated by Burfeind et al. (United States Patent Number: US 6,360,172 B1).

VII. Claims Appendix.

Examiner agrees that the copy of the claims on appeal are correct.

VIII. Evidence Relied Upon.

Burfeind et al. (United States Patent Number: US 6,360,172 B1) filed August 13, 1999.

IX. Grounds of Rejection.

1. ***Claim 1, 2, 4-11, and 15-20 are rejected under 35 U.S.C. 102 (e)*** as being anticipated by Burfeind et al. (United States Patent Number: US 6,360,172 B1).

2. Per claim 1, Burfeind taught ***a method*** (e.g., see col. 6 (line 55) ***for transmitting data*** (e.g., see Title) ***to one or more users*** (e.g., see figure 4 (490, 491, 492) and col. 11 (lines 11-23)) ***of a communications system*** (e.g., see figure 4), ***the method comprising***:
a) ***establishing a connection with one or more online users*** (e.g., see Abstract and figure 4);
b) ***designating targeting rules applicable to the one or more online users, the targeting rules designating at least a target geographic location*** (e.g., see Abstract) ***and at least one of a target type of access device*** (e.g., see col. 10 (line 44-et seq. but more specifically lines 49-53)) ***or a target type of software*** (e.g., see col. 9 (lines 11-16) in that software for email is different then for the others recited one in col. 9 (lines 11-16 of col. 9));
c) ***acquiring context information of the one or more online users, the context information indicating at least geographic locations of the one or more online users and at least one of a client type of access device employed by the one or more online users or a client type of software employed by the one ore more online users*** (e.g., see col. 10 (line 44-et seq. but more specifically line 49)) ;
d) ***applying the targeting rules to the context information to identify a subset of the one ore more online users that are associated with the target geographic location and who employ at least one of the target type of access device or the target type of software*** (e.g., see col. 10 (line 44-et seq. but more specifically line 49)) ;
e) ***generating a message that contains information describing conditions in at least a portion of the target geographic location*** (e.g., see col. 10 (line 44-et seq. but more specifically line 49)); and,
f) ***sending the message to the identified subset of the one or more online users*** (e.g., see col. 10 (line 44-et seq. but more specifically line 49)).

3. Per claim 2, claim 4, claim 5, claim 6, claim 7, claim 8, claim 9, claim 10, and claim 11, the message was a weather condition(s) notification message (e.g., see figure 11, figure 12, col. 8 (line 17-et seq.) and col. 10 (line 44-et seq. but more specifically line 49)) for one or more online subscribers (clients) of a particular type of access device and/or particular type of software with parameters for ranking (i.e., voicemail and/or email are device specific and software dependent and in different ranks) connected to a host where the token was longitude and latitude of the geographic-location per col. 13 (line 64-et seq.) for example with voting established by desired preferences of figure 10 and figure 11 and figure 12 to allow the weather message to be routed to the subscribers.

4. Per claims 15-20, these mirroring claims do not teach or defined above the correspondingly rejected claims given above since a computerized method was anticipated to be employed as or with a computer program embodied on a computer readable storage medium within an apparatus each containing the limitations recited in claims 15-20, and are also thus rejected for the same reasons given above.

X. Response to Argument.

1. Per the appellant's arguments, directed to the rejection under 35 U.S.C. 102(e), being anticipated by Burfeind et al. (United States Patent Number: US 6,360,172 B1) the appellant argued in substance that Burfeind fails to describe or suggest each and every element of independent claims 1, 15, and 19. In addition to failing to describe each and every element of independent claims 1, 15, and 19, Burfeind also fails to describe or suggest elements of dependent claims 4 and 11. The subsequent paragraphs first address the improper rejections of independent claims 1, 15, and 19, and then address the improper rejections of dependent claims 4 and 11. Specifically the appellant argued:

(A) ***Burfeind fails to describe or suggest all the features of independent claims 1, 15, and 19 and therefore fails to anticipate these claims and the claims that depend from them***. Claims 1, 2, 4-11, and 15-20 were rejected under 35 U.S.C. § 102(e) as being anticipated by Burfeind. The appellant respectfully request withdrawal of this rejection because Burfeind fails to describe or suggest "targeting rules designating, a target type of access device or a target type of software and applying the targeting rules to the context information to identify a subset of the one or more online users.., who employ at least one of the target type of access device or the target type of software," as recited in claim 1 and similarly recited in claims 15 and 19. Burfeind describes a system in which a user is first identified and then a device or software type associated with that user is determined, rather than using the device or software type to identify the user, as recited in

claims 1, 15, and 19. Specifically, Burfeind describes a system that gathers natural phenomenological data and personal preferences of the subscriber. Col. 3, lines 1-8. The personal preferences of the subscriber include the subscriber's activities and the geographic locations of the activities, calendar information of the subscriber and modes of delivery. Col. 3, lines 4-8. The system uses the personal preferences of the subscriber, such as the subscriber's activities, to generate natural-phenomenological data that is particularly useful to the subscriber. Col. 10, lines 13-19 and lines 44-53 (stating the system "generates for a subscriber who has indicated in his/her dynamic personal preferences that sailing is an activity of the subscriber... [a message indicating] the winds for sailing tomorrow will be 10-12 knots"). Once the system generates the personalized natural-phenomenological data, the system delivers the natural phenomenological data to the output device identified by the subscriber in the personal preferences. Id. (stating the system routes the personalized natural-phenomenological information to the subscriber based on the subscriber's output device). In the final Office Action and during the interview, the Examiner asserted that, in Burfeind, the personal preferences of each subscriber stored in the personal preference database 426 of FIG. 4 comprises the targeting rules, and as such, the targeting rules include target geographic location of the user and a target type of access device or a target type of software modes of delivery. Final Office Action at page 3, lines 16-17. Even assuming, arguendo, that this assertion is correct, Burfeind still fails to describe or suggest applying the targeting rules to the context information to identify a subset of one or more online users, as recited in claim 1 and similarly recited in claims 15 and 19. Instead, as clearly shown and described with respect to FIG. 4 of Burfeind, Burfeind's system first identifies a user, accesses personal preferences for the identified user, and subsequently generates a message based on the personal preferences of the identified user. Only then will the system retrieve an identification of the output device of the subscriber from the personal preferences to route the message to that device. Col. 10, lines 12-19 and col. 10, line 44 to col. 11, line 22 (stating after the personalized message is generated "the multimedia device interface 480 retrieves the identification of the output device(s) 481 of the subscriber from the personal preferences database"). As such, the system in Burfeind does not use targeting rules designating a target type of access device or a target type of software to identify a subset of one or more online users and, instead, uses an identified subscriber to determine the access device or software to which the personalized message should be routed. Accordingly, Burfeind fails to describe or suggest "targeting rules designating at least a target geographic location and at least one of a target type of access device or a target type of software and applying the targeting rules to the context information to identify a subset of the one or more online users that are associated with the target geographic location and who employ at least one of the target type of access device or the target type of software," as recited in claim 1 and similarly recited in claims 15 and 19. For at least these reasons, the appellant respectfully request reversal of the rejections of claims 1, 15, and 19, along with their dependent claims. ***HOWEVER***, Burfeind taught, as indicated above, targeting rules designating a target type of access device or a target type of software (e.g., see Abstract) and applying the targeting rules to the context information to identify a subset of the one or more online users who employ at least one of the target type of access device or the target type of software (e.g., see col. 9 (lines 11-16 of col. 9) and col. 10 (line 44-et seq. but more specifically lines 49-53)). Specifically, target rules (filters) and context information were each a combination of geographic location and at least a type of access device or type of software (see

col. 2 (line 3-et seq.) and also col. 7 (line 57 "the output device of the subscriber(s)") and col. 10 (lines 19 and 44-et seq.)). Burfeind's Abstract clearly taught "geographic locations" of the user as well as "modes of delivery" with a type of software. Since the claims recite "or", location and software reaches the defined claimed invention. Yet, Burfeind also taught type of device as well by teaching "delivery of the personalized natural-phenomenological information can be through any number of a variety of output mediums, including pagers, text to voice synthesizers to create an audio stream for playback either via a telephone or a personal digital assistant (PDA), a multimedia-enabled computer, email, computer display monitors, PDA, and a PCS phone" and thus all three, location, device, software, were taught by Burfeind. Thus, based on Burfeind's disclosure, all users (a subset) were identified by and in a specific location that used a "PDA" got a PDA type Weather Reports for their/that location while all users who were identified in specific location (same location or different location) using telephones got a telephone type Weather Report for their location. Thus Weather Reports were targeted for location, device type, and software type specific to each one ore more users in a subset of users as identified by their location, the device type, and their software type. That is, text based formatted Weather Reports for California users were not sent to non-display type telephones in Virginia. Hence, location (Miami), device type (personal computer), and software (browser) "identifies" one or more in Miami having a personal computer running a browser. While not claimed, nor disclosed, software was known to have serial numbers, thus entering such serial numbers along with software type would identify a specific single user as did telephone numbers and street addresses;

(B). ***Burfeind fails to describe or suggest all the features of dependent claims 4 and 11***. The appellants respectfully submit that the dependent claims 4 and 11 are allowable on their own merits. Claim 4 recites, among other features, "the targeting rules additionally designate an online location and applying the targeting rules to the context information comprises applying the targeting rules to the context information to identify the subset of the one or more online users that are located in the target geographic location, who employ at least one of the target type of access device or the target type of software, and who are visiting the online location." Claim 11 recites, among other features, "ranking the one or more online users based on the specified parameters." Examiner seems to rely on FIGS. 10-12 and column 8, line 17 - et seq. for rejecting claim 4. Non Final Office Action at page 4, lines 24-31. The appellant respectfully submit that these portions of Burfeind do not pertain to the subject matter of claim 4. For example, in FIG. 10, Burfeind describes class diagrams of the personal preferences class and classes related to the personal preferences class. For instance, FIG. 10 illustrates a sensitivity class (1020), a 52-64. Although, here Burfeind describes attributes associated with a geographic-location, this does not describe or suggest an online location. As such, in this portion, Burfeind does not describe or suggest designating an online location as a rule for targeting one or more online users. Column 8, line 17-et seq. of Burfeind is equally deficient. In column 8, Burfeind generally describes personalizing natural phenomenological data based on the personal preferences of the subscriber. For example, for a subscriber engaged in a sailing activity, Burfeind's system generates information regarding wind speed and direction. Col. 8, lines 17-43. As such, this portion also does not describe or suggest designating an online location as a rule for targeting one or more

online users. Accordingly, Burfeind fails to describe or suggest "the targeting rules additionally designate an online location and applying the targeting rules to the context information comprises applying the targeting rules to the context information to identify the subset of the one or more online users that are located in the target geographic location, who employ at least one of the target type of access device or the target type of software, and who are visiting the online location." For at least these reasons, the appellant respectfully request reversal of the rejections of claim 4. In connection with claim 11, the Examiner appears to rely on column 10, line 44 – et seq. and asserts that the subscriber's output devices (e.g., voicemail and e-mail) are device specific and software dependent and therefore belong to different ranks. Non Final Office Action at page 4, lines 26-29. Even assuming for the sake of the argument that this assertion is correct, this still fails to describe or suggest, "ranking the one or more online users based on the specified parameters." This at most describes ranking devices or software, and not users. Accordingly, Burfeind fails to describe or suggest, "ranking the one or more online users based on the specified parameters." For at least these reasons, The appellant respectfully request reversal of the rejections of claim 11. ***HOWEVER***, Burfeind taught, per claim 4 as indicated above and with personal preference implemented as part of the targeting rule, Burfeind taught the targeting rules additionally designated an online location (e.g., see col. 13 (line 52-et seq.) where the token was longitude and latitude of the geographic-location) and applying the targeting rules to the context information comprised applying the targeting rules to the context information to identify the subset (i.e., those in Miami per longitude and latitude) of the one or more online users that are located in the target geographic location, who employed at least one of the target type of access device or the target type of software, and who are visiting the online location (i.e., visiting Miami). Weather reports were not broadcast to all device and all users, they were focused to specific users at specific location with specific device type and specific software types. Per claim 11, as indicated above, Burfeind taught ranking (i.e., voicemail and/or email are device specific and software dependent and in different ranks) the one or more online users based on the specified parameters.

2. For all or the reasons set forth supra, it is respectfully requested that the rejections as presented be sustained.

XI. Related Proceeding Appendix.

NONE

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